

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CINDY GAMRAT,

Case No. 1:16-cv-1094

Plaintiff,

Hon. Phillip J. Green

v.

JOSHUA CLINE
and DAVID HERR,

[Oral Argument Requested]

Defendants.

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PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT UNDER
FED. R. CIV. P. 60(b)

Plaintiff Cindy Gamrat, by and through her attorneys Schenk, Boncher & Rypma, hereby brings this Motion for Relief from Judgment under Fed. R. Civ. P. 60(b) seeking relief from this Court's March 15, 2018 Order Granting Motions to Dismiss. As set forth more fully in the attached brief in support, newly-discovered evidence that was not available before the March 2018 hearing on the several motions to dismiss—thousands of communications between Defendant Cline and previous Defendants Keith Allard and Benjamin Graham, as well as recent deposition testimony—has shown that Gamrat is entitled to relief from the aforementioned Order by this

Court. Specifically, in light of this new evidence, this Court should vacate part of its judgment and allow Gamrat to re-assert the following claims that were previously dismissed against Defendants Keith Allard; Benjamin Graham; Kevin G. Cotter; Brock Swartzle; and Norm Saari:

- Count V: Violation of Federal Wiretapping Act and Michigan's Eavesdropping Statute;
- Count VI: Civil Stalking under MCL 600.2954; and
- Count X: Civil Conspiracy.

These Counts were dismissed by this Court against the above-named Defendants, but the newly-discovered evidence supports Gamrat's claim for relief from this Court's Order and shows that she should be allowed to re-assert these claims against the above-named Defendants.

This motion is being filed contemporaneously with Plaintiff's Brief in Opposition to Defendant Cline's Motion to Dismiss the Amended Complaint, and Gamrat will be filing her Motion for Leave to File Second Amended Complaint incorporating the newly-discovered evidence.

Pursuant to W.D. Mich. L. R. Civ. P. 7.1(d), on January 13, 2019, the undersigned sent an email to Defendant Horr and counsel for Defendant Cline requesting concurrence in this motion before 2:00 p.m. on January 14, 2019. Said concurrence was not received.

For the reasons set forth more clearly in the attached brief in support, Gamrat respectfully requests that this Court 1) grant this motion in its entirety; 2) grant her Motion for Leave to File Second Amended Complaint and accept the Second Amended Complaint for filing; 3) deny Defendant Cline's Motion to Dismiss the Amended Complaint in its entirety; and 4) grant Gamrat any other relief that this Court deems fair and proper.

Respectfully Submitted,

SCHENK, BONCHER & RYPMA
Attorneys for Plaintiff

Dated: January 14, 2019

By: /s/ Tyler E. Osburn
Tyler E. Osburn (P77829)

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